

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM DEAN BAKER,)
)
Plaintiff,) Case No. 1:07-cv-4
)
v.) Honorable Richard Alan Enslen
)
DONNA VANDERARK, *et al.*,)
)
Defendants.)
)

ORDER

Plaintiff, a prisoner incarcerated at the West Shoreline Correctional Facility, filed a civil complaint arguing Defendants violated his constitutional rights by failing to provide adequate medical care. Plaintiff correctly notes in his Complaint that this action is a re-filing of prior civil rights suits that were dismissed without prejudice for failure to exhaust administrative remedies. (Compl. at 1). With his Complaint, Plaintiff filed an application for leave to proceed *in forma pauperis*. On January 10, 2007, the Court entered an order granting Plaintiff leave to proceed *in forma pauperis*, and requiring him to pay an initial partial filing fee of \$3.73 when funds become available.

The Court's January 10, 2007 Order was entered in error. In a decision issued on August 29, 2006, the Sixth Circuit held that "when a prisoner 're-files' a complaint raising the same prison-conditions claims as a complaint that was initially dismissed without prejudice for failure to exhaust under the [Prison Litigation Reform Act], . . . the prisoner need not pay an additional filing fee under 28 U.S.C. § 1914(a)." *Owens v. Keeling*, 461 F.3d 763, 772-73 (6th Cir. 2006). In light

of *Owens*, and because Plaintiff's Complaint is a re-filing of claims previously dismissed without prejudice for failure to exhaust, Plaintiff is not required to pay a second filing fee under 28 U.S.C. § 1914(a). *See Owens*, 461 F.3d at 772. Accordingly,

IT IS HEREBY ORDERED that the Court's January 10, 2007 Order (Dkt. No. 3) granting Plaintiff leave to proceed *in forma pauperis* is hereby **VACATED**;

IT IS FURTHER ORDERED that Plaintiff's request for leave to proceed *in forma pauperis* in the present action (Dkt. No. 2) is **DISMISSED** as moot; Plaintiff may proceed in this action without payment of a filing fee.

DATED in Kalamazoo, MI:
February 13, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE